

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF CALIFORNIA

ALBERT E. YENDES, Jr. and  
FRANKLIN E. GARRETT, Jr.,

Plaintiffs,

v.

MARC McCULLOCH, *et al.*,

Defendants.

Civil No. 09cv1143-L(CAB)

Civil No. 09cv1144-L(CAB)

**ORDER CONSOLIDATING CASES,  
DENYING MOTIONS TO DISMISS  
AS MOOT AND VACATING  
HEARING DATES**

On October 30, 2009 the court issued an order to show cause why cases numbered 09cv1143-L(CAB) and 09cv114-L (CAB) should not be consolidated pursuant to Federal Rule of Civil Procedure 42(a). The court ordered the parties to file objections, if any, no later than November 4, 2009. No objections have been filed.

Federal Rule of Civil Procedure 42(a) gives the court discretion to consolidate cases which “involve a common question of law or fact.” On June 4, 2009 a Report of Clerk and Order of Transfer Pursuant to Low Number Rule was filed in case no. 09cv1144 finding that the case is related to case no. 09cv1143. Case no. 09cv1144 was transferred to this court based on findings that the two cases arise from the same or substantially identical transactions, happenings or events; involve the same or substantially the same parties or property; call for determination of the same or substantially identical questions of law; and for other reasons would entail

unnecessary duplication of labor if heard by different judges.

Upon review of the operative complaints and other pertinent pleadings in both cases, the court finds that the cases involve common issues of fact and law and involve substantially the same parties. Accordingly, the cases shall be consolidated for pre-trial and trial proceedings pursuant to Federal Rule of Civil Procedure 42(a) in order to avoid unnecessary costs and delay.

For the foregoing reasons, it is hereby **ORDERED**:

1. Case no. 09cv1144-L(CAB) is consolidated for pre-trial and trial proceedings with case no. 09cv1143-L(CAB) pursuant to Federal Rule of Civil Procedure 42(a).

2. All further filings shall be made in case no. 09cv1143 only.

3. No later than **November 23, 2009** Plaintiffs shall file a consolidated complaint. Because both Plaintiffs are appearing *pro se*, they shall be mindful of Civil Local Rule 83.11(a) and Federal Rule of Civil Procedure 11(a), which require, among other things, that both Plaintiffs sign the consolidated complaint.


4. Defendants shall respond to the consolidated complaint within the time set forth in Federal Rule of Civil Procedure 15(a)(3).

5. Defendants' motions to dismiss filed in each case are **DENIED AS MOOT**, and the hearing, set on this court's calendar for November 30, 2009 at 10:30 a.m., is hereby **VACATED**.

6. The hearing on Plaintiffs' motions for leave to amend, not yet filed but per Plaintiffs' requests set on this court's calendar for February 8, 2009, is also hereby **VACATED**. Plaintiffs' respective proposed amended complaints shall be merged and filed as the consolidated complaint.

**IT IS SO ORDERED.**

DATED: November 9, 2009

  
M. James Lorenz  
United States District Court Judge

COPY TO:

HON. CATHY ANN BENCIVENGO  
UNITED STATES MAGISTRATE JUDGE

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